

Add Chapter 224 ARTICLE XXV as follows:

**ARTICLE XXV
Freshwater Wetlands**

§ 224-152. Findings; policy.

- A. Wetlands in their natural state serve multiple functions, including:
- (1) Removing pollutants from surface waters by trapping sediment, removing nutrients and detoxifying chemicals.
 - (2) Recharging groundwater and surface waters, thereby maintaining stream flows needed by plants and animals to survive.
 - (3) Controlling flooding by storing and then slowly releasing stormwater runoff.
 - (4) Stabilizing stream banks by protecting them against erosion caused by stream currents or construction activities.
 - (5) Providing unique or essential habitats for diverse fish and wildlife species, including many of those on the New York State and federal lists of special concern, threatened, rare and endangered species.
 - (6) Supporting unique vegetative associations specifically adapted for survival in low-oxygen environments.

§ 224-153. Definitions.

As used in this chapter, the following terms, phrases, words and their derivatives shall have the meanings given herein:

DREDGING - To excavate or remove sediment, soil, mud, sand, gravel or other aggregate or decomposed biomass.

FRESHWATER WETLANDS - Lands and waters within the Village of Irvington, as shown on the Wetlands Map or any amendments thereto, and any lands or waters within the Village of Irvington so designated by the Village's Environmental Consultant and confirmed by the Planning Board and any other lands and waters within the Village of Irvington which contain any or all of the following:

- A. Lands and submerged lands commonly called "marshes," "swamps," "slough," "bogs" and "flats" and tributaries and/or outflows thereto each capable of supporting aquatic or semiaquatic vegetation and any lands and/or submerged lands confirmed to be wetlands by the Villages environmental consultant.

- B. Lands and submerged lands containing remnants of any vegetation that is not aquatic or semiaquatic and that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a minimum seasonal water depth of six feet and provided, further, that such conditions can be expected to persist indefinitely, barring human interventions.
- C. Lands and waters enclosed by aquatic or semiaquatic vegetation as set forth herein in Subsection A and dead vegetation as set forth in Subsection B, the regulation of which is necessary to protect and preserve the aquatic and semiaquatic vegetation.
- D. The waters overlying the areas set forth in Subsections A and B and the lands underlying Subsection C.

FRESHWATER WETLANDS MAP - The Village wetlands map of January 1989 prepared by Dr. Linda Miller as may be amended.

GRADING - To adjust the degree of inclination of the natural contours of the land, including leveling, smoothing, filling and other modifications to the natural land surface.

LOT - A tax lot as shown on the current Tax Map of the Village of Irvington and any amendments thereto.

MITIGATION PLAN - The plan prepared by an applicant when the applicant has demonstrated that either losses or impacts to the wetlands or wetlands buffer are necessary and unavoidable and have been minimized to the maximum extent practicable.

PERSON - Any corporation, firm, partnership, association, trust, estate and one or more individuals.

POLLUTION - The presence in the environment of man-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human or plant life or wildlife or other animal life or to property.

WATERCOURSE - Any natural or artificial, intermittent, seasonal or permanent and public or private water body or watercourse. A water body is intermittently, seasonally or permanently inundated with water and contains a discernible shoreline and includes ponds and lakes. A watercourse includes rivulets, brooks, creeks, streams, rivers and other waterways flowing in a definite channel with bed and banks and usually in a particular direction.

WETLANDS/WATERCOURSE BUFFER - The wetlands watercourse buffer is a specified area surrounding wetlands or a watercourse that is intended to provide some degree of protection to the wetlands or watercourse from human activity and other encroachment associated with development. The wetlands/watercourse buffer shall be subject to the regulations for wetlands as defined in this chapter and shall be determined to be the area extending 25 feet horizontally away from and paralleling the outermost boundary of wetlands and/or the point of mean high water of a watercourse or floodplain, or if a state-designated wetlands is involved, the area as

may be designated by the Commissioner of the New York State Department of Environmental Conservation.

§ 224-154. Controlled activities requiring permit.

Within a freshwater wetlands controlled area, no person shall allow or conduct, either directly or indirectly, any of the following activities without a permit issued in accordance with the requirements of this chapter:

- A. Any form of draining, dredging, excavation or removal of soil, mud, sand gravel or other material.
- B. Any form of dumping, filling, grading or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind.
- C. Erection of any structures or roads if the actual construction activity is within 100 feet of a wetlands shown on the Freshwater Wetlands Map.
- D. Driving of pilings or the placement of any other obstructions, whether or not changing or diverting the flow of water, or alteration or modification of natural drainage patterns.
- E. Alteration or modification of the contours of the land.
- F. Introduction of any form of pollution, including but not limited to installing a septic tank, running a sewer outfall discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetlands area.
- G. Destruction of natural growth, including living trees and shrubs.
- H. Any other activity which may substantially impair the natural functions served by the wetlands or the benefits derived therefrom.

§ 224-155. Activities not controlled.

Controlled activities under this chapter shall not include any of the following:

- A. Swimming or fishing, where otherwise legally permitted.
- B. Public health activities, orders and regulations of the State or County Department of Health.
- C. Mosquito control projects, unless determined by the Planning Board of the village to have an adverse impact upon the wetlands.
- D. Gardening.

- E. Construction activities that are more than 100 feet from a wetlands.
- F. Operation and maintenance of dams, retaining walls, walkways, terraces, sluices, culverts or other water-control structures or devices as were in existence on the effective date of this chapter.
- G. Conduct of normal land maintenance and conservation measures, including tree trimming and pruning, the removal of if dead or diseased vegetation, lawn and garden care and the planting of decorative shrubs or trees, subject to the limitation that excessive amounts of fertilizers should not be applied and that application of herbicides and pesticides shall be as regulated pursuant to Article 33 of the New York Environmental Conservation Law and Section 608 of the New York Public Health Law.

§ 224-156. Authority to review applications.

- A. Authority is hereby vested in the Planning Board of the Village of Irvington to review applications for the conduct of any controlled activity, as defined in this chapter, within 100 feet of a freshwater wetlands.
- B. The Planning Board is hereby authorized to review and approve the following types of applications.
 - (1) Activities involving minor soil disturbances, such as, but not limited to, the placement of fence and gateposts, supports for decks and similar construction activities. “Minor soil disturbances” shall not include the placement of any fill, any regarding or the removal of any soil from the site other than is incidental to the excavation for fence posts, supports for decks or similar construction activities.
 - (2) Construction of footbridges across watercourses.
 - (3) Installation of granite curbing and minor amounts if paving at a driveway terminus onto a public street.
 - (4) Removal of living trees and shrubs, not to exceed two trees or shrubs in a two-year period. The Planning Board may consult with a Naturalist prior to issuance of a permit.
- C. The Planning Board is hereby authorized to review and approve all other applications for the conduct of any controlled activity.

§ 224-157. Determination of impact; denial of permit; referrals; prohibited activities; conditions.

- A. In approving, denying or conditioning any permit the Planning Board shall evaluate the wetlands functions and the role of the wetlands in the hydrologic and ecological system of which it is a part and shall determine the impact of the proposed activity upon the public

health, safety and welfare and the flora and fauna, water quality and wetlands functions. Factors to be considered may include, as appropriate.

- (1) The direct and indirect impact(s) of the proposed activity upon neighboring land uses and wetlands functions, including but not limited to:
 - (a) Filing of wetlands or other modification of natural topographic contours.
 - (b) Disturbance or destruction of natural flora and fauna.
 - (c) Influx of sediments or other materials causing increased water turbidity or downstream siltation.
 - (d) Reduction in wetlands groundwater or surface water supply.
 - (e) Interference with wetlands water circulation
 - (f) A damaging reduction or increase in nutrients to a wetlands.
 - (g) Influx of toxic chemicals and/or heavy metals.
 - (h) Damaging thermal changes in the wetlands water supply.
 - (i) Destruction of natural aesthetic values.
 - (2) Any existing wetlands impact(s) and the cumulative effect of reasonably anticipated future activities in or adjacent to the wetlands subject to the application.
 - (3) The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage and water quality.
 - (4) The safety of the proposed activity from flooding, erosion, soil limitation, soil limitations and other hazards.
 - (5) The availability of preferable alternative locations on the subject parcel.
 - (6) The demonstration by the applicant that any direct and indirect impact(s) has/have been avoided to the maximum extent practicable and that any remaining unavoidable direct and indirect impact(s) has/have been minimized to the maximum extent practicable.
- B. The Planning Board shall deny a permit if the proposed activity may threaten the public health, safety or welfare, cause nuisances, impair public rights to the enjoyment and use of public lands and waters, threaten a rare or endangered plant or animal species or violate pollution control standards.
- C. Referrals may be made to the Irvington Environmental Conservation Board, to environmental consultants, and/or to the Westchester County Soil and Water Conservation District, as appropriate, to assist the Planning Board in evaluating potential impacts of the proposed activity. The Planning Board may conduct a public hearing on any application.
- D. In order to preserve the natural functions of wetlands, in general, no controlled activities will be permitted within a wetlands/watercourse buffer as defined in this chapter.

- E. In consideration of applications, the Planning Board is authorized to attach reasonable conditions intended to minimize the overall impact of the activity on the nearby wetlands or watercourse. Such conditions may include but are not limited to:
- (1) Erosion and siltation controls in compliance with the provisions of the Westchester County Best Management Practices Manual for Erosion and Sediment Control.
 - (2) In the event that it is determined by the Planning Board that impacts to wetlands or a wetlands/watercourse buffer are necessary and unavoidable and have been minimized to the maximum extent practicable, the board shall require the application to develop a mitigation plan, to include, if appropriate, creation of replacement wetlands that recreate as nearly as possible the original wetlands in terms of type, functions and setting, and that is larger, by a ratio of at least 1.5 to 1.0, than the original wetlands.
 - (3) In the consideration of applications for subdivisions and for nonresidential construction, the Planning Board may require creation and continuous maintenance of natural vegetation within the wetlands/watercourse buffer as defined in this chapter.
 - (4) In the event that it is determined by the Planning Board that there are no feasible alternatives to a construction activity within the wetlands/watercourse buffer, the Board may approve a permit subject to the condition that the applicant post a bond or other surety adequate to hire a qualified person to regularly inspect the project during construction to ensure that all mitigation measures required in the Board's approval are in fact implemented prior to the start of construction and continuously throughout the construction process until a certificate of occupancy is issued.

§ 224-158. Performance bond.

The planning Board may require that, prior to commencement of work under any permit issued pursuant to this chapter, the applicant post a performance bond, cash deposit or other surety in an amount equal to 20% of the anticipated cost of the work covered by the permit, not to exceed \$10,000, and approved as to form by the Village Attorney, to insure that all conditions of the permit are adhered to. The bond shall be released upon completion of the work permitted by said permit provided that such work is found to be in accordance with the provisions of the permit and is completed to the satisfaction of the Building Inspector.

§ 224-159. Stop-work order.

The Building Inspector may suspend or revoke a permit in the form of a stop-work based on a finding that the applicant has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth in the approved application.

§ 224-160. Fees.

For the purposes of defraying administrative costs involved in the review of applications and costs of legal notices required by law, all applications shall be accompanied by a fee to cover all Village related costs, payable to the Village of Irvington, as established by the Planning Board.

§ 224-161. Appeals.

An applicant may appeal from any decision of the Planning Board. The applicant shall commence an action pursuant to Article 78 of the Civil Practice Law and Rules within 30 days after the date the decision of the Planning Board is filed with the Village Clerk.

§ 224-162. Penalties for offenses.

Any person committing an offense against any provision of this chapter shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.